Review of prior permission conditions for consumer credit services operating on premium rate
A PhonepayPlus consultation
Publication date: 4 February 2013
Closing date: 2 April 2013
Response from txtNation

Q1. Do you have any views on the PRS consumer credit model, the potential benefits and risks to consumers and the interaction between OFT, BIS and PhonepayPlus regulations?

The current PRS consumer credit model appears to be very much focused on IVR PRS calls and has no specific guidelines for premium SMS services. We now appreciate, following clarification on this, that the PhonepayPlus definition of “call” encompasses SMS transactions, however this is misleading for people reading the guidance, where “call” traditionally means telephone call, there is no clarification of this meaning in the document, and “call” is accompanied by phrases such as “length” and “duration” in minutes.

To avoid future confusion and doubt, we suggest each IVR specific condition is shadowed by a PSMS equivalent. This should prevent any need for interpretation of conditions into PSMS and provide transparency for both providers and PhonepayPlus employees when giving advice on such matters.

In particular, we would like clarification in PSMS terms for:

“ii. Calls to the main credit brokerage service – i.e. the application for a loan – must not exceed one call.” Does this apply to one premium rate SMS also?

“iii. Calls must not exceed 15 minutes in duration.” How does this translate to premium SMS?

“xiii. Callers must be informed upon connection that their details may be passed to PhonepayPlus for regulatory purposes and, having been given this information, they should be asked to confirm whether or not they wish to continue.” Would be good to be provided the required wording in full for PSMS, similar to how prescriptive text is provided for other services.

“xv. The following statistics must be provided on a monthly basis:
a. A breakdown of the length of each call made to the service,” What should be provided for this in relation to PSMS?

Q2. Do you have any views on the new conditions we are proposing for transparency around rates of interest charged and their impact on either consumers or providers? Please provide any evidence to support your views.

We agree that providers should be clear and transparent with all information including rates of interest charged.

Q3. Do you agree with our assessment that publishing the average acceptance rates of lenders will help consumers to make an informed decision? Please provide any evidence to support your views.

By publicizing the acceptance rate, this may encourage L2's operating consumer credit services to put money generated from PRS into funding riskier loans, to increase their acceptance rate. So the effect may be that more vulnerable are accepted for loans.

Q4. Do you have any views on the impact this may have on PRS-based providers? Please provide any evidence to support your views.

We have had applications from pay day loan companies to use premium rate SMS to facilitate their consumer credit service. After a review of the current prior permission requirements four out of five of these companies have now decided to not seek prior permission and operate via other means.

Feedback as to why they do not wish to pursue a prior permission application seems to center on several factors:

1. Cost – although the obvious administration costs must be covered can PhonepayPlus justify why the further fees (other than administrative) are required. An application costs £300 with around a further £400 in admin (as advised on your website). If the £400 covers administration, can PhonepayPlus provide a breakdown of the £300.

2. Workload – The sheer volumes of data such as call logs and refund data required by PhonepayPlus on a monthly basis adds operational cost. From feedback we have received, the cost for this level of administration would cancel out any profit made from premium rate revenue generated.

3. Risk – L2's perceived risk for potential fines from PhonepayPlus when the rules are so strict and laborious. Why invest in premium rate services when the risk for a fine and therefore a loss in revenue is high should a "one off issue" occur e.g. risking a fine if they fail to send in the logs.

Q5. Do you have any views on the new condition we are proposing for the price transparency of calls and its impact on consumers or providers? Please provide any supporting evidence.

With the exception that this is clarified for both IVR and PSMS, we have no other views. Perhaps you could even look at different price restrictions PSMS and IVR as this will provide clarity and less issues with interpretation.

Q6. Do you have any views on the new conditions we are proposing around the total number of calls and their impact on consumers or providers? Please provide any supporting evidence.

With the exception that this is clarified for both IVR and PSMS, we have no other views.

Q7. Should PhonepayPlus consider introducing new measures to improve refund rates for eligible consumers?

There appears to be some lack of clarity and inconsistency with the consultation document and the Draft prior permission certificate for consumer credit services.

The consultation document states “3.31 PhonepayPlus therefore considers that consumers must be better informed about their right to a refund if their loan application is not approved. We therefore fully support and propose to implement in our prior permissions the OFT requirement that consumers must be informed of their right to a refund of all but £5 of the call cost within the first minute of their call.”

Annex A – Draft prior permission certificate for consumer credit services states “The refund should not be less than the amount by which the cost of the call to the caller has exceeded £5.”, which is a sentence that is difficult to understand. Is this reflecting OFT’s requirement?

Whilst page 21 states “Category-Specific conditions: Callers must be provided clear information that they have a right to request a refund if their application is unsuccessful, within the first minute of the call.”

Does the requirement to refund for unsuccessful applications still apply if the user was billed under £5?

We agree with OFT’s requirements for refunding all but £5, however if there are additional requirements for all failed applications to be refunded the cost to L2’s for processing applications for loans should be considered, and so long as the L2 is clear in their promotions what criteria the applicant must satisfy to receive the loan, and provide feedback as to why they were unsuccessful, we think that having this requirement is unfair and does not create a level playing field with other payment methods, or other “application” equivalents. For example, will PhonepayPlus’ fee for Consumer Credit Prior Permissions be refunded if an application is unsuccessful?

Furthermore, the cost to the L2 to refund is far above the amount that they receive from their premium revenue share, e.g. operator share, PhonepayPlus levy, L1 share(s), tax, refund processing fees, making the business model non-viable. Albeit a small amount, and purely to illustrate the point, will PhonepayPlus make provisions to refund their levy if the application is unsuccessful?

Making clear that the end user will be charged X amount regardless of the outcome of their application, fairly manages the expectations of the end user, before the application is made. Even mandatory quotes such as, “THE COST OF THIS APPLICATION FOR A LOAN IS £X.XX REGARDLESS OF ACCEPTANCE” or similar, in our opinion would be a better way to correctly inform an end user of the costs.

Q8. Do you have any views on what steps could be taken to improve the current refund rates?

Only allowing charging after the acceptance of the loan is an obvious; however our view still remains that refunding an end user if they are not accepted could only lead to lenders accepting more and higher risk end users for a loan and will not solve existing problems.

Q9. Do you agree with our impact assessment? If not, why not?

Although we see logic, a need and obligation for PhonepayPlus to address issues with the current consumer credit prior permission process, we feel that more simple and important changes are required before PhonepayPlus address the rather industry specific changes they are currently looking at.

The need for a clear, defined and dedicated set of guidelines for PSMS would eliminate the requirement for interpretation that leads and runs the risk of falling into misinterpretation.

An in-depth breakdown of the levels of interaction a provider can have with a consumer credit related company before a prior permission is required. As an example I have advice from the PhonepayPlus compliance team that we can offer a premium rate service for a consumer credit company that has no interaction with the setup of facilitation of a loan. For example: charging to reset the pin number used when logging into the website or similar.

Conclusion

txtNation feels no clear guidance at this time exists for the requirements of a PSMS provider looking to facilitate a consumer credit service. We feel the current prior permissions documents and guidance is too centred on IVR services. We would like to see a clear and defined set of guidance for PSMS that is not open to interpretation.